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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 695

NATIONAL UNION OF MARINE COOKS AND STEWARDS AND INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, PACIFIC AMERICAN SHIPOWNERS ASSOCIATION, PACIFIC MARITIME ASSOCIATION, ALASKA STEAMSHIP COMPANY, AMERICAN MAIL LINE, LTD., POPE & TALBOT, INC., AND SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The order of the court below and the separate opinion of Judge Pope (Pet. App. i–ix)[1] are re-

[1] The symbol "Pet. App." refers to the appendix attached to the petition where Judge Pope's opinion is reproduced.

ported at 218 F. 2d 913. The Board's Decision and Direction of Election, a copy of which is attached hereto as Appendix A, *infra,* pp. 11–12, is reported at 110 NLRB No. 254.

JURISDICTION

The order of the court below denying the motion of the National Union of Marine Cooks and Stewards (NUMCS) for a rule to show cause and the petition of International Longshoremen's and Warehousemen's Union (ILWU) for leave to intervene was entered on January 22, 1955. The petition for a writ of certiorari, in which NUMCS and ILWU join, was filed on April 1, 1955. Petitioners invoke the jurisdiction of this Court under 28 U. S. C. 1254 (1) and under Section 10 (e) of the Act.[2]

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are set forth in Appendix B, *infra,* pp. 23–25.

QUESTION PRESENTED

Whether the immunity from judicial review normally accorded representation proceedings

[2] ILWU has no standing under Section 10 (e) of the Act—even assuming that Section were otherwise applicable—because it was not a party to the consent decree which is advanced as the basis of the claim for relief.

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under Section 9 of the National Labor Relations Act, as amended, is forfeited merely because a prior consent decree entered pursuant to an unfair labor practice proceeding under Section 10 enjoins recognition of a union as statutory bargaining representative unless and until certified by the Board under Section 9.[3]

STATEMENT

On June 19, 1952, pursuant to a petition for enforcement of a Board order predicated on unfair labor practice findings, the court below entered a consent decree which, *inter alia,* enjoined Pacific Maritime Association (PMA) from recognizing NUMCS as exclusive representative of stewards department employees "unless and until

[3] Petitioners' second question (Pet. 3), relating to the propriety of the Board's unit determination, would only be presented if, contrary to our view, jurisdiction existed in the court below to review that determination. In any event, the Board's unit determination is plainly reasonable as shown by its Decision and Direction of Election, *infra*, pp. 11–12, and constitutes a proper exercise of the wide discretion which Congress vested in the Board in respect to these matters. *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146; *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 134; *Packard Motor Car Corp.* v. *National Labor Relations Board*, 330 U. S. 485, 491–492; *National Labor Relations Board* v. *A. J. Tower Co.*, 329 U. S. 324, 330. See also Board Opposition to the Rule and To Intervention, filed in the court below and made part of the record herein (R. Vol. 16).

such organization shall have been certified by the Board" (R. Vol. 14, Pet. App. iii–iv). The consent decree, to whom Marine Cooks and Stewards, affiliated with Seafarers International Union (SFU), was also a signatory,[4] provided in addition for a nondiscriminatory hiring system to be continued in effect so as to remove "impairments to the conduct of a free and impartial election that may be ordered by the [Board] in pursuance of the National Labor Relations Act for the purpose of selecting and certifying an exclusive bargaining representative" for such employees (Pet. App. iv, v).

Subsequently, on September 23, 1952, the Board directed an election among steward department personnel on PMA ships. By agreement, the bargaining unit was limited to stewards and no party urged the appropriateness of a more inclusive unit. *Pacific Maritime Association,* 100 NLRB 1259. In the election conducted between February and May 1954, no participating union received a majority of the votes cast,[5] the stewards continue unrepresented, and to the present are dispatched under the hiring system prescribed in the consent decree (Pet. 9–10).

In September 1954, SFU filed with the Board a new representation petition asking for certifica-

[4] ILWU was not a party to the enforcement proceedings and did not sign the consent decree.

[5] The participating unions were NUMCS and SFU. A belated request by ILWU, on the eve of the election, to appear on the ballot was denied by the Board (Pet. 9, Pet. App. v).

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tion as bargaining representative of all unlicensed seagoing personnel on PMA ships, including engine and deck personnel as well as steward personnel. Shortly thereafter, ILWU filed a petition seeking certification as bargaining representative of steward personnel only. A consolidated hearing was held in which PMA, SFU, and ILWU appeared, and NUMCS was permitted to intervene. *Pacific Maritime Association*, 110 NLRB No. 254; *infra*, pp. 11–22. PMA concurred with the view of SFU that an overall bargaining unit was appropriate. NUMCS joined in the position taken by ILWU that the bargaining unit should be limited to stewards only, or that, in the event the Board found a broader unit appropriate, the stewards be permitted to vote separately as to their desires concerning representation. Upon consideration of the whole record the Board, on December 16, 1954, found an overall unit appropriate, rejected the contentions advanced by ILWU and NUMCS in this regard, and directed that an election be held to determine which, if any, of the three unions the employees desired as their bargaining representative (*infra*, pp. 14–18, 21–22).

The Board also considered and rejected the contention, *inter alia*, that the SFU petition should be dismissed because SFU had theretofore allegedly engaged in membership policies which discriminated against Negroes (*infra*, pp. 12–14).

On the eve of the scheduled election, NUMCS, which had in the meantime withdrawn from the election contest, applied to the court below for a rule to show cause why the Board should not modify its Decision and Direction of Election (Pet. 11). ILWU moved to intervene in support of that application (*ibid.*). In substance, the application alleged that the Board had erred in the representation proceeding in rejecting petitioners' proposal that the unit be limited to steward personnel only, and in finding a broader unit appropriate. Advancing no claim of right to obtain judicial review of the representation proceeding as such, petitioners based their prayer for relief on the ground that the consent decree of June 19, 1952, contemplated an election limited to steward personnel only. Accordingly, petitioners asked in effect that the Board's Decision and Direction of Election be set aside and that the Board direct an election limited to stewards only.

After appropriate hearing, the court below, on January 22, 1955, entered an order without opinion denying the motion for order to show cause and denying the petition for intervention. 218 F. 2d 913. Judge Pope, in a separate opinion accompanying the order, stated, *inter alia*, that the court was without jurisdiction to grant the relief sought. Noting that Section 9 of the Act vested in the Board, and not in the courts, exclusive power to determine the appropriate unit for bargaining purposes, Judge Pope concluded that for the court to compel the Board to determine

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as the appropriate bargaining unit a grouping which the Board had theretofore rejected would constitute a judicial usurpation of the Board's exclusive jurisdiction in this regard. 218 F. 2d 914–916. In respect to the contention that the Board had, by entering into the consent decree of June 19, 1952, waived its exclusive authority in respect to this case, Judge Pope observed that the Board, being a statutory creature and not a private party, could not validly relinquish or qualify its statutory powers and duties under Section 9 of the Act (*ibid.*).[6]

ARGUMENT

The ruling of the court below adheres to a uniform line of authority established in this Court and the courts of appeals, and presents no question warranting review. Except in the single situation where a Board order in an unfair labor practice proceeding is based in whole or in part on facts certified in a representation proceeding, and a petition for enforcement or review of that order is filed—a situation not presented here—no jurisdiction exists in the courts of appeals to review the propriety of Board action in a representation proceeding. *American Federation of Labor* v. *National Labor Relations Board,* 308 U. S. 401; *National Labor Relations Board* v.

[6] The election directed by the Board on December 16, 1954 (*supra*, p. 5), has been held, and the ballots were counted on April 7, 1955. This Court on April 18, 1955, denied petitioners' application, filed April 8, 1955, for a stay of the election proceedings pending disposition of the petition for certiorari.

International Brotherhood of Electrical Workers, 308 U. S. 413; Section 9 (d) of the Act. Accordingly, even where a representation proceeding has been consolidated with an unfair labor practice proceeding before the Board, and the latter proceeding is properly before a court of appeals for review, the court is nonetheless without power to review the related representation proceeding. *National Labor Relations Board* v. *Falk Corporation,* 308 U. S. 453. This principle of non-reviewability of representation proceedings, established, as the cited cases show, in the early days of the Wagner Act, was unchanged by the 1947 amendments. *Operating Engineers, AFL, Local No. 148* v. *Operating Engineers, AFL, Local No. 2,* 173 F. 2d 557 (C. A. 8); *General Drivers* v. *National Labor Relations Board,* 179 F. 2d 492 (C. A. 10). Indeed, a proposal in the House at that time to insert a clause in the amended Act providing for direct review of certifications by the courts of appeals was rejected, and the law remains unchanged in this regard. See H. Rep. No. 245, 80th Cong., 1st Sess., 43, 59–60; H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 56–57; 93 Cong. Rec. 6444.

Petitioners recognize this sharp limitation on direct judicial review of representation proceedings. However, they purport to find warrant for such review of the instant case in the terms of the June 1952 consent decree. In their view, the consent decree contained an "implied direct-

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tion" that an election be conducted among steward department personnel alone for the purpose of determining their collective bargaining representative (Application for Rule to Show Cause (Par. xv)). The court below, construing its own decree, implicitly rejected this reading. But even assuming that this interpretation of the consent decree was warranted, and assuming further that the 1954 election (*supra*, pp. 4–5) had not fulfilled the "implied direction" in the consent decree,[7] petitioners' contention falls. For, as Judge Pope correctly reasoned (218 F. 2d at p. 916), the Board derives its powers solely from its governing statute, and neither the Board nor the courts can bypass the exclusive procedure which Congress outlined in Section 9 of the Act for the determination of an appropriate bargaining unit.[8] In the instant case, neither the unfair labor practice proceeding out of which the consent decree arose nor the consent decree itself even purported to determine the appropriate bargaining unit. The machinery for the resolution of that issue is provided in Section 9 of the Act. In these circumstances, petitioners' ef-

[7] In petitioners' view the consent decree, so long as it remained in effect, would preclude the Board from finding any unit other than a stewards unit appropriate, no matter how cogent the considerations which might indicate, then or subsequently, the appropriateness of some other unit.

[8] It follows that the authorities which petitioners cite (Pet. 12–17) relating to the broad powers of a court of equity to enforce and police decrees within its authority to issue are wholly inapposite.

fort to utilize the unfair labor practice proceeding as a means of obtaining review of a representation proceeding, otherwise immune from review, is wholly without warrant.

CONCLUSION

The ruling of the court below is correct in all respects and no conflict of decisions is presented. For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel.

DOMINICK L. MANOLI,
Assistant General Counsel,

ARNOLD ORDMAN,
Attorney,
National Labor Relations Board.

MAY 1955.

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APPENDIX A

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Cases Nos. 20–RC–2651, 20–RC–2675

PACIFIC MARITIME ASSOCIATION AND ITS MEMBERS COMPANIES,[1] EMPLOYERS *and* SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, PACIFIC DISTRICT, COMPRISING MARINE FIREMEN'S UNION, SAILORS' UNION OF THE PACIFIC AND MARINE COOKS & STEWARDS, AFL[2] *and* INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION,[3] PETITIONERS

DECISION AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Louis S. Penfield, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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[1] Hereinafter referred to as PMA.

[2] Hereinafter referred to as SIU. The three Unions abovenamed as comprising the Pacific District of the SIU, are hereinafter referred to respectively, as the MFU, SUP, and MCS.

[3] Hereinafter referred to as ILWU.

Upon the entire record in this case,[4] the Board finds:[5]

1. The Employers are engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employers.[6]

3. A question affecting commerce exists concerning the representation of employees of the Employers within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for for the following reasons:[7]

ILWU and NUMCS moved to dismiss the SIU petition on the basis of alleged discriminatory

[4] ILWU's motion after the hearing to correct the record in certain minor respects is hereby granted.

[5] ILWU's request for oral argument is hereby denied as the record adequately presents the issues and positions of the parties.

[6] National Union of Marine Cooks and Stewards, Independent, hereinafter referred to as NUMCS, intervened herein.

[7] We find no merit to ILWU's contention that the SIU petition should be dismissed because the Pacific District is not in compliance. In effect, the MFU, SUP, and MCS are seeking to represent the employees herein as joint petitioners, merely designating themselves as the Pacific District of the SIU. Board precedent has fully established the propriety of two or more labor organizations acting jointly as bargaining representative for a single group of employees. *Wm. Cameron & Co., Inc.*, 98 NLRB 969, at 973. Because the Pacific District, as such, has no charter, no constitution or bylaws, no offices or treasury of its own, and no officers except for the heads of the three constituent unions which have fully complied, we find that it is not required to comply separately with the provisions of Section 9 (f), (g), and (h) of the Act. See *Rock Hill Printing & Finishing Company*, 82 NLRB 932, N. 5, at 934; *Kilber-Camp Phosphate Enterprise*, 107 NLRB No. 226, at pp. 1–4.

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membership policies against Negroes by the MFU and SUP.[8] The hearing officer properly rejected an offer of proof by ILWU and NUMCS, which were supported in such offer by the National Association for the Advancement of Colored People,[9] concerning such alleged discriminatory practices.

Even assuming such discrimination has existed in the past as alleged in the offer of proof, the Board, while not condoning such practice, has no express authority to pass on eligibility requirements for membership in a labor organization.[10] However, the Board will police its certification of a statutory bargaining agent to see to it that it represents equally all employees in the bargaining unit regardless of race, color, or creed. Should the certified bargaining agent fail to do so, the Board may revoke its certification.[11] Moreover, there are available those remedies which exist by virtue of the unfair labor practices provisions in the Act.

Finally, we note that the MFU, SUP, and MCS formally stated at the hearing that, if certified, they would not discriminate against any employee in the bargaining unit on the basis of race, creed or color and will negotiate and administer collective bargaining contracts in the same nondis-

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[8] There is no allegation of discriminatory practices by the MCS.

[9] Hereinafter referred to as the N. A. A. C. P. The Board has considered the *amicus curiae* brief filed by the N. A. A. C. P., which appeared at the hearing, and its accompanying motion to file such brief is hereby granted.

[10] *Hughes Tool Company*, 104 NLRB 318, at 321; *Veneer Products, Inc.*, 81 NLRB 492, at 493.

[11] *Hughes Tool Company*, 104 NLRB 318, at 322.

criminatory manner. However, should it later be shown, by appropriate motion, that equal representation has, in fact, been denied to any employee in the unit because of his color, the Board will consider revoking any certification which may issue herein. Accordingly, we deny the motion of ILWU and NUMCS to dismiss the SIU petition on the above ground.

4. In Case No. 20–RC–2651, the SIU seeks to represent a unit of all unlicensed personnel on PMA ships, comprising engine, deck and steward personnel. PMA supports the SIU position. In Case No. 20–RC–2675, ILWU seeks a unit limited to steward department personnel, or, in the alternative, should the Board find the broader unit appropriate, a self-determination election among the stewards. The NUMCS joins in the self-determination election among the stewards. The NUMCS joins in the unit position taken by ILWU. All parties agree that whatever unit is found appropriate it should be associationwide in scope.

PMA is a nonprofit California corporation which bargains on behalf of its members. PMA members operate vessels in what is termed the offshore, intercoastal, Alaska, and coastwise trades, commonly referred to collectively as the Pacific offshore trade. All seagoing vessels such as the type operated by the members of PMA, are required by law to be manned by a minimum number of employees, broadly classified into licensed and unlicensed personnel. The unlicensed personnel with whom we are concerned comprise the deck department, engine department, and the stewards. The deck department is responsible for the operation and maintenance

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of the ship on deck. The engine department employees work in the hold of the ship and perform various functions relating to the operation and maintenance of the machinery which drives the ship. The steward department employees operate the hotel or housekeeping section of the ship. Strongly supporting the finding of the overall unit herein is the fact that the interests of all unlicensed offshore personnel are closely related. The work of the three departments is functionally integrated, and each is dependent upon the other in the performance of the common task of operating the vessel. The employees in the three departments live, eat, and work in close conjunction and share a close and common interest in the working conditions aboard ship. The common interests of unlicensed personnel on shipboard has long been recognized by the Federal Government, as evidenced by that fact that it has regulated many of their working conditions for years.[12] Moreover, the record shows, as contended by PMA and the SIU, that the pattern of separate bargaining for each department which has existed on the Pacific Coast since 1937, is not consistent with the bargaining pattern in the remainder of the maritime industry. For example, the balance of the American Merchant Marine Fleet (75 to 80 percent of all vessels) operating in the East Coast, Gulf and Great Lakes areas bargains on an overall or industrial basis for its unlicensed personnel.[13]

[12] See Title 46 of the U. S. Code.

[13] PMA and the SIU contend that the establishment of an overall unit of unlicensed personnel herein would contribute substantially to industrial peace on the Pacific Coast by tend-

We also note that bargaining for the Pacific offshore trade was on an overall basis prior to 1937, under the Pacific District of the now defunct, International Seamen's Union of America, (hereinafter referred to as the ISU).[14] Thus, in 1934, the National Longshoremen's Board appointed by the President of the United States under Public Resolution No. 44, found that the entire unlicensed personnel on Pacific Coast vessels, who were eligible for membership in the district unions of the ISU constituted the appropriate unit, and so certified the ISU, after it won the election.

Finally, we note that there is no serious contention that a unit of all unlicensed seagoing personnel, as described above, is not appropriate, and the Board has, in the past, directed elections in such overall units.[15] There remains the ques-

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ing to eliminate the "whipsaw" tactics and jurisdictional disputes which have disrupted relations between the three departments in the past, and point to the favorable experience of the balance of the maritime industry in this respect. The possibility of "whipsaw" tactics have derived, so it is urged, from the fact that there have been separate contracts for the deck, engine, and stewards personnel, which frequently expire at different dates, and which provide that whenever more favorable conditions were given one department, the same conditions must be given to others.

[14] The SUP, MFU, and NUMCS formerly were affiliated with and formed the Pacific District of the ISU. After the revocation, in 1938, of the ISU charter by the AFL, which then chartered the SIU in its place, the SUP affiliated with the SIU, the MFU remained independent, and the NUMCS affiliated with the CIO. However, the NUMCS were subsequently expelled from the CIO and in October 1953, the MFU affiliated with the SIU.

[15] *International Mercantile Marine Company, et al.*, 2 NLRB 971; *American France Line, et al.*, 3 NLRB 64;

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tion as to whether the Board should direct a self-determination election among steward department employees. The strongest factor advanced by ILWU and NUMCS in support of a self-determination election is the fact that there has been separate bargaining for the deck, engine, and steward departments on the Pacific Coast since 1937. However, the bargaining history with respect to the stewards is tainted with illegal assistance.[16] PMA was ordered by the Board to cease recognition of the NUMCS as representative of the stewards, unless and until certified by the Board. Thereafter, on June 19, 1952, a consent decree was entered in the United States Court of Appeals for the Ninth Circuit, proceeding No. 13386, similarly providing for the termination of the bargaining relationship between PMA and NUMCS unless and until such time as certified by the Board. The consent decree further provided for registering and dispatching employees in the steward department through a Central Registration Office under the supervision of a Court-appointed referee. Subsequently, on September 23, 1952, the Board directed an election among steward department personnel on PMA ships. By agreement, the unit was limited to stewards and no party urged the appropriateness of an overall unit of unlicensed personnel. *Pacific Maritime Association,* 100 NLRB 1259. In the election conducted between February and May, 1954, no participating union

Standard Oil Company of New Jersey, 23 NLRB 860; *Midland Steamship Lines, Inc.*, 70 NLRB 1124.

[16] The Board so found in its decision in *Pacific American Shipowners Association* (predecessor to PMA), 98 NLRB 582, issued on March 12, 1952.

received a majority of the votes cast, the NUMCS receiving only 14 ballots out of over 2,000 votes counted, with the result that the stewards continue unrepresented and to the present have continued to be dispatched through the Court-supervised Central Registration Office.

Our appraisal of the foregoing facts, and upon consideration of the entire record in this case, persuade us that the separate bargaining history of the steward department is not entitled to controlling weight. Therefore, we shall not predicate a unit finding on the bargaining history of an illegally assisted union.[17] Moreover, we are of the opinion that the interests of the steward department personnel and of all other unlicensed seagoing employees will be best served if they are represented for collective bargaining purposes in a single overall unit. In these circumstances, we shall direct one election, in the overall unit of unlicensed seagoing employees, and shall not provide for a self-determination election in the steward department.[18]

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[17] *Pacific Telephone and Telegraph Company*, 80 NLRB 107, at 112; *Alberts Incorporated*, 91 NLRB 522, at 524; see *Southwest Truck Body Company*, 93 NLRB 1341, at 1343; *Meyer's Bakery of Little Rock, Inc.*, 97 NLRB 1095, at 1097.

[18] ILWU contends that, under Section 9 (c) (3) of the Act, no election can be held now because of an election conducted in the steward department between February and May, 1954, or less than 12 months ago. Because the election directed herein is in a unit which is not the same "bargaining unit or any subdivision" thereof, under Section 9 (c) (3), we find no merit to this contention. *Vacuum Cooling Company*, 105 NLRB 795.

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Accordingly, we find that all unlicensed seagoing employees [19] on vessels operated by members of the Pacific Maritime Association, a nonprofit California corporation,[20] excluding all licensed employees, staff officers, radio officers, concessionaires and their employees,[21] musicians, doctors, doctors' assistants, nurses, hospital attendants, food controllers, auditors of supplies, together with their assistants and apprentices, animal tenders, nut-turners, and all supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.[22]

5. Because of the turnover and resulting labor pool in the maritime industry, the ILWU and NUMCS urge the Board to depart from its usual eligibility formula and to include any employee who has sailed once in the 15-month period im-

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[19] Because their working conditions, including their duties, quarters, mess, and type of supervision, are essentially different from those employees in the unit, we shall exclude the printers and their assistants, painter-joiners, and the deck yeoman on the passenger vessel, S. S. Lurline, all of whom have formerly been excluded from contract coverage.

[20] Included are the unlicensed personnel on ships operated by the members of PMA under General Agency Agreements with the National Shipping Authority. See *Pacific Maritime Association*, 100 NLRB 1259, n. 21 at 1264.

[21] Among others, this classification covers tailors, barbers, beauty operators, photographers, hairdressers, shopping-center attendants, shop attendants, and valets.

[22] Excluded as supervisors are the chief stewards on passenger vessels and freighters as well as associate chief stewards on passenger vessels. *Pacific Maritime Association*, 100 NLRB 1259 at 1264.

mediately preceding the date of the Direction of Election herein. The SIU contends that, because there is no way of knowing whether a particular individual in the labor pool will continue to go to sea, the Board should use its customary eligibility rules. The PMA takes no position.

We are, of course, aware of the substantial turnover and the work-sharing practices in the shipping industry on the Pacific Coast. However, despite contentions in prior cases that we should, in view of these factors, broaden the base of eligibility, we have held, and the election results have confirmed our view, that use of our usual maritime election eligibility rules result in a representative vote and avoid uncontrollable difficulties that would otherwise arise. We are not persuaded that there are in this case any reasons warranting a departure from the Board's usual policy in this respect. We shall therefore apply the customary rules in determining eligibility to vote.[23]

Accordingly, those employees who were employed during the payroll period immediately preceding the date of the issuance of the Notice of

[23] *Pacific Maritime Association*, 100 NLRB 1259, at 1265. In view of our above determination concerning eligibility, we shall exclude from voting all those employees, including the trip-off men in the steward department, who have left their jobs under the spread-the-work programs in the three departments. Also, standbys who fill in only when a ship is in port and are carried on the shoreside payroll are clearly ineligible to vote under the Board's customary eligibility tests. Because of the inadequacy of the record, the eligibility of employees who have been sailing on a ship in drydock on the eligibility date, can best be resolved by challenges.

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Election and who are still employed at the time of balloting will be eligible to vote in the election directed herein.

It is generally Board practice in directing elections among employees on seagoing vessels to leave the method of voting to the discretion of the Regional Director. We shall therefore follow this practice in the instant case. Consistent with such practice, we hereby vest in the Regional Director discretion to determine the exact time, place and procedure for conducting the election.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Pacific Maritime Association and its Member Companies, an election by secret ballot shall be conducted as soon as convenient and beginning as soon as is practicable after the date of this Direction, in conformity with the instructions set forth in paragraph numbered 5, above, for the conduct of such election, under the direction and supervision of the Regional Director for the Twentieth Region, and subject to Sections 102.61 and 102.62 of the National Labor Relations Board Rules and Regulations among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the payroll period immediately preceding the date of the issuance of the Notice of Election, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, and employees in the military service of the United States who appear in person at the polls, but excluding those

employees who have since quit or been discharged for cause and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented for the purpose of collective bargaining, by Seafarers International Union of North America, Pacific District, comprising Marine Firemen's Union, Sailors' Union of the Pacific, and Marine Cooks & Stewards, AFL; or by International Longshoremen's and Warehousemen's Union, or by National Union of Marine Cooks and Stewards,[24] or by none.

Dated, Washington, D. C., December 16, 1954.

GUY FARMER,
Chairman.

ABE MURDOCK,
Member.

IVAR H. PETERSON,
Member.

PHILIP RAY RODGERS,
Member.

ALBERT C. BEESON,
Member.

[SEAL] NATIONAL LABOR RELATIONS BOARD.

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[24] The NUMCS have been given a place on the ballot pending the outcome of the proceeding now before the Board concerning the compliance status of NUMCS.

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APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are as follows:

REPRESENTATIVES AND ELECTIONS

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SEC. 9. (b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargain-

ing unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

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(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

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(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made

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are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

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